IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1278 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT ELECTRICITY BOARD - Petitioner(s)

Versus

D.R. ACHARYA & 9 - Respondent(s)

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Appearance :

MR NK MAJMUDAR for Petitioner(s) : 1,

MR PRABHAKAR UPADYAY for Respondent(s) : 1 - 10.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 23/08/2005

CAV JUDGMENT

1.In this petition under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the legality and validity of the judgement and order passed by the Industrial Tribunal, Rajkot dtd.26/7/2004 in Reference (IT)No.101 of 1995.

2.It appears that the respondents herein were working with the petitioner Board and they were appointed as Daily Wagers and they were performing table work as Junior Assistants. They were designated as supernumerary Junior Assistants in the year 1998 more particularly vide order dtd.11/8/1988 and they were appointed as Junior Assistants on regular basis by different orders dtd.11/1/1989. It also appears that all the respondents workmen raised

an Industrial Disputes for the relief that they were required to be appointed as Junior Assistants on regular basis on completion of 4 years and 960 days as per Circular No.446 and requested to appoint them as Junior Assistants on completion of 4 years and 960 days and to give all consequential benefits inclusive of seniority, posting etc. The said dispute was referred to the Industrial Tribunal, Rajkot for its adjudication being Reference (IT) No.101 of 1991. The Industrial Tribunal vide its judgement and Award dtd.26/7/2004 partly allowed the said reference directing the petitioner G.E.B., to give all benefits of a regular Junior Assistants on completion of 4 years and 960 days i.e. From the date mentioned in the operative order and to pay all consequential benefits available to the respondents workmen along with 6% interest from 30/3/1991. Being aggrieved by and dissatisfied with the aforesaid judgement and

Award passed by the Industrial Tribunal, Rajkot dtd.26/7/2004, the petitioner GEB has preferred the present petition under Articles 226 and 227 of the Constitution of India.

3.Mr.N.K. Majmudar, learned advocate appearing on behalf of the petitioner GEB has vehemently submitted that the Industrial Tribunal has materially erred in directing the petitioner to give benefits of Junior Assistant to the respondents on completion of 4 years and 960 days. It is further submitted by him that the respondents workmen had claimed benefit of ceder of Junior Assistants or equivalent post thereto from the date of their appointment inspite of the fact that all of them were initially appointed on the post of Store Lashkar and Calculator purely on temporary basis and the post of Store Lashkar and Calculator cannot be equated with the post of Junior Assistant. It is also further submitted that for giving appointment to the post of

Junior Assistant on regular establishment, the employee is required to undergo training as per the Commercial Apprentice Act and the employee should possess qualification of graduation and only when the employee acquires qualification of graduation undergoing training for a period of one year, he is to be considered on merits and subject to his limitations as and when vacancy so arises for the post of Junior Assistant. It is submitted that the Industrial Tribunal has not considered the above aspects. It is further submitted that what has weighed with the Industrial Tribunal while passing the impugned order is that though the injunction granted by the Industrial Tribunal in Complaint (IT) No.45 of 1993 was in operation, restraining the GEB from giving promotion to the juniors, the Chief Executive Engineer, Sika Division had given promotion to the junior employees in breach of the injunction and therefore, with a view to set an example, the

Industrial Tribunal has passed the impugned Award with bias mind. It is further submitted that the Industrial Tribunal has passed the Award in favour of the respondents workmen in contravention of the Rules, Regulations and GSO No.165 and therefore, it is requested to allow the present petition.

4.Per Contra, Mr.Prabhakar Upadhyay, learned advocate appearing on behalf of the respondent workmen while opposing the present petition and supporting the impugned judgement and Award passed by the Industrial Tribunal has submitted that the Industrial Tribunal has passed the impugned judgement and Award considering practice and the order of the GEB to the effect that on completion of 4 years and 960 days, an employee is to be made permanent on regular basis and in the present case, when it is found that though all the respondents workmen were doing table work as Junior Assistants as Daily Wagers and have completed 4 years and 960

days, they were not made permanent on regular basis and the juniors to them were appointed and promoted, the Industrial Tribunal has passed the impugned order directing the petitioner Board to give all consequential benefits as Junior Assistant to them on completion of 4 years and 960 days and therefore, it is required to dismiss the present petition. It is further submitted that the contention on behalf of the petitioner Board that the respondents workmen had sought regularization as Junior Clerk from the date of their joining is not factually correct and in fact, the concerned workmen had sought the relief and the designation of Junior Assistant on regular basis on completion of 4 years and 960 days. It is also further submitted that during the pendency of the reference, the petitioner Board decided to grant further promotion to the post of Senior Assistant ignoring the seniority of the employees whose

names were included in the seniority list in the reference and therefore, the present respondents lodged a complaint under the provisions of the Industrial Disputes Act, 1947 which came to be registered as Complaint (IT) No.45 of 1993 and after hearing both the sides, the Industrial Tribunal, Rajkot passed order below Ex.2 on 19/8/1997, whereby the order of status-quo was granted by the Tribunal and the same was confirmed. However, ignoring the injunction and the status-quo order granted by the tribunal, the petitioner Board granted promotion to the juniors to the respondents which shows the conduct of the petitioner Board. It is submitted that the only relief which is granted by the Industrial Tribunal is with regard to grant of the benefits of Circular No.446 for granting all benefits as a regular benefits on completion of 4 years and 960 days, more particularly when on appreciation of evidence it is found that all

the respondents workmen were working as Junior Assistants from their initial date of appointment. It is also further submitted that considering the fact that the juniors to the petitioners were granted benefits of regular appointment as Junior Assistant by the petitioner Board, the Industrial Tribunal has granted benefits of Circular No.446. The said finding is recorded by the Industrial Tribunal on appreciation of evidence and the same is not required to be interfered in exercise of the powers under Articles 226 and 227 of the Constitution of India.

5. Having heard the learned advocates appearing on behalf of the parties and considering the material on record, it is clear that the Circular No.446 dtd.14/2/1985 on the basis of which relief was sought and the benefit is granted by the Industrial Tribunal, reads as under;-

> “(1) All nominal muster roll employees working in the Board who have completed as on 1-4-1983, 240 days of continuous service in each of four or more years preceding 1-4-1983 shall be deemed to be permanent on regular establishment in the prescribed time scale according to the nature of work being done by the employee concerned w.e.f. 1-4-1983 or the subsequent date as the case may be. That is, an NMR employee working as a Welder, and satisfying the conditions for regular employment as above would be appointed in the same capacity in a regular post.
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> Continuous service shall mean services rendered by NMR employees for 240 days in a year. However, if an NMR employee has put in aggregate continuous service of 960 days with the Board, he shall be deemed to have completed four years of continuous service.
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> Continuous service for the purpose of the above clause shall be as defined under Section 25-B of the Industrial Disputes Act.”

6.On appreciation of the evidence, the Industrial Tribunal has held that the all the concerned workmen – respondents herein were doing table work as Junior Assistant since their

appointment as Daily Wagers and were entitled to the benefits of Circular No.446 and were deemed to be permanent on regular appointment on completion of 4 years and 960 days. All the concerned workmen – respondents herein were appointed as supernumerary Junior Assistants on different dates. However, they were not made permanent on regular establishment as Junior Assistants on completion of 4 years and 960 days and they were not given the benefits and the pay-scale available to the Junior Assistants on completion of 4 years and 960 days. There is not an iota of evidence to show that the employee who was required to be made permanent on regular establishment on completion of training and on vacancy being available. Under the circumstances, the contention of the petitioner to that effect cannot be accepted. No such contention was raised before the Industrial Tribunal. Even otherwise, the Industrial Tribunal has rightly

held that all the concerned workmen were having requisite qualification of Junior Assistant. Considering various orders passed by the petitioner Board by which other employees were given benefits of permanency on regular establishment on completion of 4 years and 960 days, the Industrial Tribunal has directed the petitioner to give similar treatment to the respondents workmen and hence the same cannot be said to be illegal and/or contrary to the evidence on record or perverse in any manner whatsoever. The Industrial Tribunal has also considered the conduct of the petitioner Board in ignoring the cases of the concerned workmen – respondents and the conduct of the petitioner Board in violating the injunction order of status-quo granted by the Tribunal by which the petitioner Board was restrained from granting promotion as Senior Assistant and the conduct of the petitioner Board in granting promotions to the juniors to the respondents

workmen on the post of Senior Assistant. It is required to be noted that the same is an additional factor which is considered by the Industrial Tribunal and the same is not sole consideration by the Industrial Tribunal. The impugned judgment and Award passed by the Industrial Tribunal is on merits. Considering the finding recorded by the Industrial Tribunal in the impugned judgment and Award, the contention of the petitioner that the tribunal has recorded the finding with bias mind, cannot be accepted. It is required to be noted that in fact all the concerned workmen – respondents were designated / appointed as supernumerary Junior Clerks on completion of 4 years and 960 days, however, no benefits was given to them and considering the evidence on record and Circular No.446, the Industrial Tribunal has directed the petitioner Board to give benefits available to the regular permanent Junior Assistants to the concerned

workmen – respondents on completion of 4 years and 960 days and it cannot be said that any illegality is committed by the Industrial Court which requires interference of this Court in exercise of the powers under Articles 226 and 227 of the Constitution of India. Under the aforesaid circumstances, there is no substance in the present petition and the same is required to be dismissed and is accordingly dismissed with no order as to costs. Notice is discharged.

(M.R. SHAH, J.)

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